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JUL 31 1992

STATE OF MAINE

SUPREME JUDICIAL COURT

SUPREME JUDICIAL COURT

Docket No. Bar-92-9

BOARD OF OVERSEERS OF THE BAR

v.

ROBERT P. BROWN

OPINION AND ORDER

This matter was heard by the Court on June 30, 1992, on an information filed by the Board of Overseers of the Bar against Robert P. Brown, an attorney-at-law duly admitted to practice law in the State of Maine, alleging misconduct based on a complaint filed with the Board. The Board was represented by Assistant Bar Counsel Karen G. Kingsley, Esq., and the defendant was represented by Robert E. Mongue, Esq. The Board's Exhibits 2 through 5, attached to the information, and Exhibits 1 through 23 and Exhibits 26, 27, 28 and 30 were admitted in evidence without objection. The Board's Exhibit 1, attached to the information and being the grievance complaint filed by Charlotte Chick with the Board, was admitted in evidence over the objection of the Defendant. Defendant's Exhibit 1, an enlargement of the Board's Exhibits 26 and 27, was admitted in evidence without objection.

This information is based on a complaint filed by Charlotte Chick with the Board against the defendant arising out of defendant's claim of a right-of-

dismissed  
on appeal

way over real property owned by John and Charlotte Chick. Based on the evidence presented, the Court finds the following facts: On or about November 10, 1984, John and Charlotte Chick purchased certain real property located in South Berwick. At the time of their purchase Frank Keyes owned property adjacent to the property purchased by the Chicks. Beginning in 1987 and continuing for approximately one year while Keyes was harvesting wood from his land, the Chicks allowed Keyes to pass from the southerly side of Old County road across their land to his property using what appeared to be an old, narrow, dirt road. On completion of the wood harvesting, Keyes listed his property for sale after having determined that he could find no deed for a right of way across the Chick land or any other evidence of his right to use the old road. At no time did Keyes believe that the road he had been allowed to use was a public road nor would he have so represented to any purchaser of his property. In September 1989, Keyes, by a warranty deed, conveyed to the defendant approximately 43 acres of undeveloped land adjacent to the Chick property. The deed also purported to quitclaim to the defendant all of "the grantor's right, title and interest in and to a certain fifty (50) foot right of way over the old road extending across land now or formerly of John Chick as said road extends from the southerly side of the Old County Road, so-called, to the land herein being conveyed."

Keyes did not recall having talked to the defendant prior to the closing that took place in the defendant's office and had not seen him personally until that time. The deed of conveyance to the defendant was

drafted by an agent of the defendant, and the language purporting to convey the fifty-foot right-of-way over the Chick land was inserted with his knowledge and consent but without the knowledge or consent of Keyes. In the chain of title to the property conveyed by Keyes to the defendant, there is no record of a deeded right-of-way across the Chick property. The distance to the property from the Old County Road across the Chick property was approximately 300 feet. The other means of access to the property was a distance of approximately one and one-half miles.

On October 2, 1989, the defendant, using stationery bearing a letterhead designating him as an attorney and setting forth his office address and telephone number, wrote to John Chick advising him of the defendant's purchase from Keyes and stating, *inter alia*, that "[h]aving conducted a full title examination of the parcel prior to purchase, I am aware that the deed to the right of way across this land is unrecorded. I will be having my parcel surveyed, including the right of way that extends from Old County Road across your land. The purpose of this letter is to notify you that, as the new owner of the Keyes lot, I will be taking the necessary steps to clarify all boundary lines and to confirm my right of way across your property." The letter further stated that he had been informed by Keyes that previously they had been unwilling to cooperate on the right-of-way issue and that he preferred to meet with the Chicks within 10 days to attempt to resolve the right-of-way issue without resort to the court system, but if they did not "come to terms that are fair to me and you" within that period, the complaint and summons that the defendant had drafted would

be filed on October 15, 1989 and served on the Chicks by the Sheriff's Department at their home or place of employment. The Chicks did not respond to the letter. The complaint, with the defendant appearing pro se, was filed on October 16, 1989, and the Chicks were duly served with a copy of the summons and complaint.

By his complaint against the Chicks, the defendant alleged that he had an easement cross the Chick property by prescription, by necessity or by implication and sought a declaration by the court of the "rights, status and other legal relations with respect to [defendant's] right to use and enjoyment of said right-of-way." On December 5, 1989, the Chicks, through their attorney, filed an answer to the complaint and a motion to dismiss the complaint. In the interim, there was some correspondence between the defendant and the Chick's attorney without any agreement being reached as to the claimed right-of-way.

On January 29, 1990, Charlotte Chick filed a complaint against the defendant with the Board. The defendant was advised of the complaint and by a letter to the Board dated February 23, 1990 responded to it. In response to a written inquiry by the Board as to the basis for the defendant's contention that he was entitled to a 50-foot right-of-way across the Chick property, the defendant, in a letter dated August 21, 1990, responded that he understood that the South Berwick zoning ordinance required a 50-foot right-of-way as a prerequisite to any development of his land for residential use. By a deed dated May 16, 1990, the defendant conveyed the property to John A. Kaufman. It was reconveyed by Kaufman to the defendant by a deed

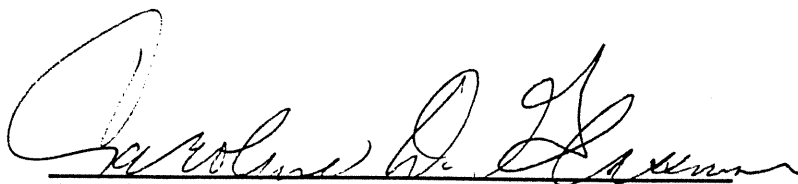
dated August 16, 1990. In June 1991, after the matter had been set for trial, the defendant dismissed his complaint against the Chicks without prejudice.

Although the merits of the defendant's claim presented to the Superior Court by his subsequently dismissed action against the Chicks is not before this Court, the defendant presented no evidence to this Court to factually support his claim. The sole issue before this Court is whether the defendant has violated Maine Bar Rules 3.1(a); 3.2(f)(3) and (4); and 3.7(a) as alleged by the Board in the information filed by the Board. Based on the Court's findings, the Court concludes that the defendant's course of conduct with relation to the Chicks flowing from his knowing insertion of misinformation in the deed from Keyes to the defendant purporting to convey a 50-foot wide right-of-way across the land of the Chicks was in violation of Maine Bar Rules 3.1(a) and 3.2(f)(3).

In determining the appropriate sanction for the violations found in this case, the court notes that the defendant was recently publicly reprimanded by the Board, pursuant to Maine Bar Rule 7.1(e)(3)(C), for his discourteous and degrading comments concerning the District Court to a court employee who was fulfilling the duty of communicating a judicial decision of that court to the defendant.

It is hereby ORDERED that Robert P. Brown is suspended from the practice of law for a period of six months effective 30 days after the entry of this order, and he shall file a timely affidavit attesting his compliance with the requirements of Maine Bar Rule 7.3(i)(1).

Dated: July 31, 1992

A handwritten signature in cursive script, appearing to read 'Caroline D. Glassman', written over a horizontal line.

Caroline D. Glassman  
Associate Justice  
Supreme Judicial Court

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